



Wylfa Newydd Project

Post Oral Hearing Summaries for Wednesday 6th March

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Contents

1	Written summary of Horizon's oral submissions at the DCO Issue Specific Hearing held on 6 March 2019	1
1.1	Introduction	1
2	Summary of Oral Submission on s.106 – 6 March 2019	15
2.1	General update	15
2.2	Governance and resources	15
2.4	Location of secured commitments (DCO or s106 agreement).....	16

List of Tables

Table 2-1	1 March DCO S.106 Agreement Status Note	17
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1 WRITTEN SUMMARY OF HORIZON'S ORAL SUBMISSIONS AT THE DCO ISSUE SPECIFIC HEARING HELD ON 6 MARCH 2019

1.1 Introduction

- 1.1.1 This note summarises submissions made on behalf of Horizon Nuclear Power Wylfa Limited ("Horizon") at the Issue Specific Hearing on the draft Development Consent Order held on 6 March 2019.
- 1.1.2 Oral submissions by all parties attending the hearing were made pursuant to the agenda published by the Examining Authority ("ExA") on 28 February 2019.
- 1.1.3 In setting out Horizon's position on the issues raised in the agenda, as submitted orally at the hearing, the format of this note follows that of the agenda.

Agenda Item/Issue	Summary of Horizon's oral submissions
Item 3 – Articles and Schedules of the dDCO (Excluding Schedules 3 and 21)	
a. To establish any changes to the last stated position of IPs in respect of the articles and schedules of the dDCO [REP5-005].	<p>Article 2 – definition of "commence"</p> <p>In response to IACC's concerns regarding the potential size and scale of temporary buildings that may be constructed under (j), Michael Humphries QC noted that the temporary enclosures and buildings would be typical of those expected for site establishment activities, such as welfare buildings, portacabins and materials and equipment storage. While there is difficulty in defining heights and scales at this stage of the Project, Horizon would consider whether any additional wording can be added to (j) to place a parameter around the likely scale of these structures.</p> <p>If Horizon is able to include a restriction, an amended paragraph (j) will be included in the updated DCO submitted at Deadline 8 (25 March 2019).</p>

Agenda Item/Issue	Summary of Horizon's oral submissions
	<p>Article 2 – definition of "first nuclear concrete"</p> <p>Michael Humphries QC noted that while "first nuclear concrete" was an Office for Nuclear Regulation and industry recognised term, Horizon would revise the definition to refer to "first nuclear construction" to align the definition to the time period used in the Phasing Strategy [X].</p> <p>Horizon would, however, need to consider whether the change to "first nuclear construction" would change any of the triggers under the DCO as this was not necessarily the same moment in time as first nuclear concrete. An amended definition will be included in the updated DCO submitted at Deadline 8 (25 March 2019).</p> <p>Article 2 – definition of "maintain"</p> <p>In response to IACC's proposed amendments to the definition "maintain", Michael Humphries QC noted that Horizon had provided its response in [REP3-019]. In regard to the appropriateness of the definition within the DCO, Michael Humphries QC made the following points:</p> <ul style="list-style-type: none"> • Maintenance powers will apply to both the NSIP and associated development – both of which are covered by the DCO pursuant to section 31 of the Planning Act 2008. • It is essential that Horizon can maintain and repair buildings and structures constructed as part of the Project for their operational lifetime. For associated development, maintenance would only be for a temporary period. Horizon should not be required to have to seek separate planning permissions to enable these works. • The definition is very clear that only those works that do not result in materially new or materially different environmental effects to those assessed in the Environmental Statement can be undertaken. • In respect of the IACC's objection to the need to "relay, enlarge and extend" in respect of associated development, Dalar Hir was again raised as an example of where Horizon may need to extend facilities as part of maintenance works (i.e. bus shelters to accommodate larger buses). However, the extent to which it could extend any structures would still be limited by the maximum parameters in the DCO and the assessment undertaken within the Environmental Statement.

Agenda Item/Issue	Summary of Horizon's oral submissions
	<ul style="list-style-type: none"> It is not necessary to amend the definition in the way that the Welsh Government has sought, as parameters have already been captured in the inclusion of "Environmental Statement"; to refer to parameters would create more uncertainty as to what is actually meant. <p>Article 5 – Effect of the Order on the site preparation permission</p> <p>Michael Humphries QC noted that in the Deadline 4 update of the DCO, Horizon had amended article 5, Schedule 4 and the definition of "SPC permission" in article 2 to reflect that fact that the Site Preparation and Clearance planning permission had been withdrawn.</p> <p>Horizon has, however, left open the possibility that there could be an application for those works under the Town and Country Planning Act 1990 in future. If that occurred, article 5 provides that IACC and Horizon will agree on what conditions would be deemed approved for the purposes of Work No.12 once notice to switch to the DCO was served by Horizon.</p> <p>In response to a question from the Panel, Michael Humphries QC confirmed that Horizon wanted to retain the ability to undertake site preparation works through a planning permission as this would enable it to start works in advance of pre-commencement discharges, contractors being appointed and final approvals being obtained in order to implement the DCO. This would have significant timing and cost benefits.</p>
<p>Item 3b. To identify areas where there are still differences of opinion and whether additional work, mitigation or changes to the dDCO are proposed or required, including: and</p> <p>i. matters addressed or likely to be addressed at the Issue</p>	<p>Article 19 – Construction and maintenance of new and altered streets</p> <p>In response to concerns raised by IACC on the amendments made to this article at Deadline 5, Michael Humphries QC noted that maintenance and adoption were being resolved with IACC through the protective provisions in Schedule 15 of the draft DCO and that Horizon and IACC were close to reaching agreement.</p> <p>Article 78 – Arbitration</p> <p>In response to a question from the Panel, Michael Humphries QC confirmed that the amendments sought by Trinity House in [REP6-054] would be included in the updated DCO submitted at Deadline 8.</p>

Agenda Item/Issue	Summary of Horizon's oral submissions
<p>Specific Hearings in March 2019;</p>	<p>Article 82 – Crown rights</p> <p>In response to a query from Welsh Government, Michael Humphries QC confirmed that Welsh Government's land (which has been included within the updated Crown Land Estate Plans [REP6-022]) would be captured within (2)(a)(iii) land "belonging to a government department or held in trust for Her Majesty for the purposes of a government department". Horizon will make an amendment to the Explanatory Memorandum submitted at Deadline 8 to make it clear that this article also applies to Welsh Government land.</p> <p>Schedule 1 – Other Associated Development (b) and (p)</p> <p>In response to IACC's request for the removal of "expedient" from paragraph (p), Michael Humphries QC noted that while this term could be removed, it is included in a number of other granted DCOs and so it was not clear why this DCO had to be an exception.</p> <p>In respect of the waste sewage treatment plant, Michael Humphries QC confirmed that as this applied to a number of work areas Horizon could not include it within a specific work area; however, this plant would be captured within the new Overarching Construction Drainage Plan in Requirement WN1 which Horizon had offered in the updated DCO submitted at Deadline 5 [REP5-003]. As IACC had approval of this scheme, it would have control over the location of the plant. Horizon would review the scope of this scheme in Schedule 21 and consider whether specific reference to the plant needs to be included.</p> <p>In response to a question from the Panel, Michael Humphries QC responded that Horizon would need to confirm whether the list of works in the preamble to Other Associated Development in Schedule 1 needed to include the new Work No.16 but considered this was likely.</p> <p>Schedule 19 – Procedure or approvals, consents and appeals.</p> <p><i>Appeal body</i></p> <p>Michael Humphries QC confirmed that Horizon's position on the appropriate appeal body for the DCO remained as set out in Horizon's response to SWQ2.4.43 [REP5-002]. Although Horizon</p>

Agenda Item/Issue	Summary of Horizon's oral submissions
	<p>has no preference as to whether it is the Welsh Government or the Secretary of State, it was noted that there are a number of Welsh DCOs, including North Wales Wind Farm (where the Welsh Government had made submissions on the point), Wrexham, and Brechfa where the Secretary of State determined that he should be the appeal body, despite the devolution arrangements that are in place for Wales. As nuclear is a reserved matter, Horizon wants to ensure that the relationship between Cardiff and Westminster is properly reflected. For this reason, Horizon considers that the ultimate decision should be left to the Secretary of State.</p> <p>In response to the comments made by the Panel, Michael Humphries QC confirmed that Horizon would amend the new appeal right (d) to sit in subparagraph (1) of paragraph 5 of Schedule 19 of the Order, rather than sub-paragraph (2).</p> <p><i>Fees</i></p> <p>In regard to the fee schedule set out in Schedule 19, Michael Humphries QC confirmed that it was based on town and country regulations that applied in a number of other DCOs, including the Hinkley Nuclear Power Station. In addition, Horizon is also providing a significant amount of funding to IACC in respect of monitoring and its programme office, who would be involved in the discharge of requirements (refer to Schedule 16 of the draft section 106 agreement [REP5-007]). This includes:</p> <ul style="list-style-type: none"> • an annual service level contribution of £500,000 on implementation and for the duration of construction which will apply to the costs of the Programme Office (total £4.5 million); • an annual monitoring contribution of £60,000 per annum (total £540,000) for the duration of the construction period; and • an annual monitoring contribution of £40,000 per annum (total £2 million) for the duration of the operational period. <p>It is important, therefore, for the Panel to consider these fees in light of the entire financial package that is being provided to the Council.</p> <p>Michael Humphries QC confirmed that in the Deadline 5 update of the DCO [REP5-003], Horizon had included a new sub-paragraph (4) to confirm that fees would be increased in accordance with</p>

Agenda Item/Issue	Summary of Horizon's oral submissions
	any amendments to the fee regulations. It was confirmed that Horizon would make a subsequent amendment in the Deadline 8 version of the DCO to refer to Welsh version of the regulations.
Item 3b. To identify areas where there are still differences of opinion including [...] ii. the status of Schedule 1 Authorised Development Work No 1D.	This matter was addressed at the 7 March 2019 ISH on the Associated Development Sites.
Item 4 – Schedule 3 – Requirements of the DCO	
Item 4 - To identify areas where there are still differences of opinion and whether additional work, mitigation or changes to the dDCO are proposed or required, including matters addressed or likely to be addressed at the Issue Specific Hearings in March 2019. [REP5-005]	<p>Paragraph 1 – definition of "great crested newt receptor sites"</p> <p>In response to a query by the Panel on the figure reference, Michael Humphries confirmed that references to figures in this definition and other definitions of receptor sites would be checked and confirmed in the Deadline 8 version of the DCO.</p> <p>PW2 – Phasing Strategy</p> <p>In regard to the Phasing Strategy, Michael Humphries QC made the following comments:</p> <ul style="list-style-type: none"> • The Phasing Strategy [REP5-039] outlines the delivery of key mitigation, not intended to be the phasing of all construction activities. • The Phasing Strategy included Figure 2-1 of the Construction Method Statement [APP-136] (which sets out indicative construction phasing) to provide show how the delivery of key mitigation aligned with certain key stages in the Project. • It would not be appropriate to tie the delivery of mitigation to defined dates; what is important is that the mitigation is in place before the anticipated environmental effects will occur. • It is preferable to keep the Phasing Strategy secured through the DCO requirements, rather than the section 106 agreement. This is because it is essential that contractors are aware

Agenda Item/Issue	Summary of Horizon's oral submissions
	<p>of the obligations that it contains and this will be much easier if it sits as a control document within the DCO.</p> <ul style="list-style-type: none"> • While these triggers could all be included as individual requirements, it is clearer and more efficient to have them in a control document, which is just as secure as a requirement (and would avoid numerous additional requirements). • Horizon will consider the triggers that have been provided but notes that the Phasing Strategy is supplemented by section 106 contributions, such as the Housing Fund which will help to mitigate impacts on local housing in the event that there is a delay to the provision of the Site Campus. • [REP5-054] explains the contractual flow-down of obligations between Horizon and its contractors. <p>PW7 – Wylfa Newydd Code of Construction Practice</p> <p>In response to requests from the Council for the Traffic Incident Management Scheme to apply to Work No.12, Michael Humphries QC confirmed that Work No.12 had been carved out of this scheme because it was considered too small a work to require a scheme. It was also noted that the Traffic Incident Management Plan differed from the Construction Traffic Management Plan sought by the Council.</p> <p>In response to the Welsh Government's request that the Health and Wellbeing Engagement Group is listed as a consultee to the Community Safety Management Scheme, Michael Humphries QC noted that as these schemes are approved by IACC, it has discretion as to whom it may consult with. He also noted that the bodies identified in Schedule 21 are statutory bodies, rather than engagement groups established under the section 106 agreement.</p> <p>PW8 – Wylfa Newydd Workforce Behaviour</p> <p>In response to requests by North Wales Police for approval in respect of the Codes of Conduct, Michael Humphries QC noted that, as set out in response to SWQ2.4.17 [REP5-002], workforce behaviours will be largely governed through terms of employment (such as the National Agreement</p>

Agenda Item/Issue	Summary of Horizon's oral submissions
	<p>for the Engineering and Construction Industry (NAECI 2015) and the Construction Industry Joint Council (CIJC) Working Rule Agreement). The intention has always been that the WMS would be approved through the DCO process.</p> <p>SPC7 – Existing Archaeological Programme</p> <p>In response to Welsh Government's concerns about the processing of the existing archaeology materials, Michael Humphries QC confirmed that the summary reports would be submitted for examination at Deadline 7. Michael Humphries QC also reconfirmed his comments from the ISH held on 4 March where he confirmed that Horizon is currently considering offers for the storage of the materials and analysis of those materials that are perishable.</p> <p>In respect of requests by the Welsh Government for the Panel to impose a restoration bond, Michael Humphries QC confirmed that no other DCO requires an applicant to provide a restoration bond to cover abandonment. This matter was specifically considered and rejected in the Hinkley Point C DCO where the ExA held that "that national policy does not require that infrastructure projects must insure themselves against the possibility of incomplete development". Creating an obligation for restoration security would establish a particularly difficult precedent and would prejudice the delivery of this Project. The new article 84, does however, restrict the commencement of Work No.12 until the Secretary of State is satisfied that the undertaker has the requisite funding. This is a sufficient protection.</p> <p>WN1 – Main Power Station Site sub-CoCP</p> <p><i>WN1(3)(a) – WNDA Archaeological Scheme</i></p> <p>Michael Humphries QC confirmed that the new article that had been sought by the Welsh Government in [REP4-053] for an archaeology scheme was now covered by Requirement WN1. This now requires an Archaeological Mitigation Scheme for the WNDA under Requirement WN1 which must be submitted for approval before commencement of the Power Station and Site Campus Works. This was confirmed in [REP5-051].</p> <p>This scheme is also supplemented by the Archaeological Scheme that is required under SPC7 and SCP8 in respect of Work No.12. For this reason, Horizon considers that Welsh Government's concerns regarding archaeology are sufficiently addressed.</p>

Agenda Item/Issue	Summary of Horizon's oral submissions
	<p><i>WN1(3)(b) - AIL Management Scheme</i></p> <p>In response to the Welsh Government's request for a Project-wide AIL Management Scheme, Michael Humphries QC confirmed that the AIL Management Scheme did not apply to the associated development sites or Work No.12 as there were no AILs associated with these works. For this reason, Horizon considers that it should be able to commence Work No.12 before it needs to have the AIL Management Scheme approved by IACC. Michael Humphries also confirmed that each of the new requirements that dealt with schemes for approval would be revised to make it clear who was the discharging authority and to ensure cross-references were correct. All of these schemes could not be delivered until the Project-wide schemes under Requirement PW7 had been approved.</p> <p><i>WN1(3)(c) - Overarching Construction Drainage Scheme</i></p> <p>In response to queries from the Council and NRW over how the SSSI would be protected, Michael Humphries QC confirmed that Horizon would offer two new schemes in the Deadline 8 update of the DCO for Hydroecological Monitoring and Mitigation Schemes for the Cae Gwyn and Tre'r Gof SSSIs to be approved by the Council, in consultation with NRW. It was also confirmed that the Overarching Construction Drainage Scheme in Requirement WN1 would apply to the SSSIs; however, Horizon would review Schedule 21 to confirm if this needed to be made clearer.</p> <p>In response to concerns raised about the fact that the drainage scheme was "overarching", Michael Humphries QC confirmed this was because drainage would evolve throughout construction and so it was appropriate to have an overarching scheme, that would then be detailed in phased construction plans in relation to specific parts of the WNDA (see Requirement WN[A]).</p> <p>Requirement WN21 – Landscape Detailed Design</p> <p>In response to comments from the Panel on the appropriateness of the trigger for the approval of landscape schemes for the Site Campus approved under Requirement WN21, Michael Humphries QC confirmed that the trigger was appropriate as this site would be phased and so not all the landscaping would, or could be in place, prior to the occupation of Phase 1 of the Site Campus. This is also appropriate for mitigation that is required to be in place early in the Project.</p>

Agenda Item/Issue	Summary of Horizon's oral submissions
	<p>In this respect, this requirement takes a slightly different approach to others, which require approval prior to the commencement of the works.</p> <p>Requirement WN11 – Landscape and Habitat Management Schemes</p> <p>In response to concerns by the Council over the triggers for submission of these schemes, Michael Humphries QC confirmed that it was appropriate that the approval of these schemes was linked to the completion for the relevant works as these schemes provided for the future management of those works. Michael Humphries QC also confirmed that construction lighting schemes were now being offered for all sites.</p> <p>Requirements WN 12 to 14 – Receptor Sites</p> <p>In respect of the "long term management" of the receptor sites, Michael Humphries QC confirmed that these sites were being provided as enhancement sites and areas where species could be translocated to during construction. Once construction has completed, it is intended that the species would naturally move back to the habitat created within the WNDA. For this reason, these requirements only require management for the duration of the undertaker's interest in the sites (which is currently 15 years). Horizon would consider removal of reference to "long-term management" to avoid any confusion.</p> <p>Requirements WN15 and 16 - Parking</p> <p>Michael Humphries QC confirmed that Horizon was now committing to providing a Car Parking Phasing Strategy which would deal with parking provision during construction and operation. This would be included in the Deadline 8 update of the DCO.</p> <p>Requirement WN23 – Site Campus Decommissioning Scheme</p> <p>In response to NWWT, Michael Humphries QC confirmed that Horizon would consider amending WN23(b) to refer to "nature conservation" but managed in an agricultural fashion.</p>

Agenda Item/Issue	Summary of Horizon's oral submissions
	<p>Requirement LC3 – Logistics Centre detailed design approval</p> <p>In response to requests for landscaping design and management schemes, Michael Humphries QC noted that landscaping schemes had not been offered for the Logistics Centre as the landscaping that would be implemented would be very simplistic and so would not need management. This was set out in Horizon's response to SWQ2.4.39 [REP5-002]. However, Michael Humphries QC confirmed that Horizon would review the requirements and consider if landscaping design can be submitted for approval; however, this could not impact on the operational functions of the Logistics Centre.</p>
Item 5 – Schedule 21 – Control Documents and Schemes	
<p>Item 5a. To identify areas where there are still differences of opinion and whether additional work, mitigation or changes to the dDCO are proposed or required, including matters addressed or likely to be addressed at the Issue Specific Hearings in March 2019. [REP5-005]</p> <p>Item 5b. To identify any additional schemes requiring discharge and to be included in Schedule 21.</p>	<p>In the Deadline 5 update to the DCO [REP5-003], Horizon offered 14 new additional schemes and at the date of the ISH, an additional 6 schemes were committed to. These would be included in the Deadline 8 update of the DCO.</p> <p>In respect of outstanding issues between the parties, this agenda item was deferred on the basis that there was a meeting scheduled between Horizon and the Council for 8 March 2019. The parties agreed to report back to the Panel at Deadline 7 (14 March 2019).</p> <p>In response to a question from the Panel, Michael Humphries QC confirmed that the provision of a Bio-Security Risk Assessment is secured through the Wylfa Newydd CoCP [paras 11.2.43 – 45 of REP5-020].</p>

Agenda Item/Issue	Summary of Horizon's oral submissions
Item 7 – Funding	
<p>Funding Position</p> <p>a. To consider the implications of uncertainty and lack of timescales for agreeing external funding on</p>	<p>Michael Humphries QC referred the examination to the letter published on 6 March 2019 which sets out the proposed wording of new articles 83 (Guarantees in respect of payment of compensation) and 84 (Funding for implementation of the project) which Horizon has offered following Hitachi's announcement to suspend the Project.</p> <p>Article 83 – Guarantees in respect of payment of compensation</p> <p>Michael Humphries QC noted that, as a result of the suspension, a number of issues had been raised regarding the need for there to be some form of security for compensation relating to compulsory acquisition before works could commence and the need for timeframes for implementation of various aspects of the DCO. Michael Humphries provided an explanation to the Panel of how the proposed article 83 would work in practice and how it would ensure that security for compensation was in place prior to the Project being implemented.</p> <p>Article 84 – Funding for implementation of the authorised development</p> <p>Michael Humphries QC made the following comments in respect of article 84:</p> <ul style="list-style-type: none"> • The drafting of this article was based on the test that the Secretary of State had to apply in respect of an applicant's funding statement under the DCLG Guidance on Application forms. This article therefore requires the Secretary of State to be satisfied that the Project is likely to be undertaken and there no obstacles or barriers to having the necessary funding. Given the wording reflects current policy, it is not appropriate to further fetter the decision-making authority of the Secretary of State. • The wording reflects the very standard position that it is unusual that a developer would have the funding available at the time that the DCO is granted, and that is not the policy test for the Secretary of State under the guidance. Other DCOs (such as Swansea) have confirmed that it would be unreasonable to require a developer to demonstrate the availability of the necessary funds on DCO grant.

Agenda Item/Issue	Summary of Horizon's oral submissions
	<ul style="list-style-type: none"> • The article also recognises that it may be necessary for Work No.12 to be undertaken and so Work No.12 had been excluded from the main security. However, prior to Work No.12 commencing, Horizon (or whoever is the undertaker) would need to provide security in relation to that work. • In response to Welsh Government's comments that security should also be provided in respect of the Kitchen Garden, Michael Humphries QC noted that this was not necessary as it was already addressed in the Section 106 agreement and Work No.12 would be specifically amended at Deadline 8 to exclude the Kitchen Garden. <p>Other consequential amendments</p> <p>In addition to the new articles, Michael Humphries QC also drew the Panel's attention to other consequential amendments that were proposed as a result of the articles:</p> <ul style="list-style-type: none"> • Amendment to article 9 to delete paragraphs (4) and (5) so that any consent under the DCO must be with the consent of the Secretary of State. In making this decision, the Secretary of State will take into account all relevant matters including funding and character of the transferee. (Previously no consent was required where the transferee was a nuclear licence holder.) • Extensions to the timeframe to implement the DCO under Requirement PW1 (extended to 6 years) and service of acquisition notices under articles 28, 31 and 33 (extended to 10 years).

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2 Summary of Oral Submission on s.106 – 6 March 2019

2.1 General update

- 2.1.1 Significant progress has been made on drafting the s106 agreement with extensive meeting and drafting sessions occurring between IACC, the Welsh Government, Horizon and their advisors.
- 2.1.2 Further meetings are scheduled with IACC, the Welsh Government and Gwynedd for the week commencing 11 March.
- 2.1.3 By way of very brief overview on agreed matters:
- The front end of the agreement is largely agreed save as regards a matters in clause 7 on the deed of covenant. Some definitions will also need finalising also.
 - Security/financial standing matters will be dealt with now proposed via the DCO.
 - Save in respect of quantum, there is agreement as to the principle of most matters on the topic specific schedules, albeit there is drafting to be finalised in a number of the schedules.
- 2.1.4 In terms of outstanding matters, a separate table is set out at table 1-1 to this note.
- 2.1.5 Responses to all points raised by interested parties will be responded to in a detailed post hearing note.

2.2 Governance and resources

- 2.2.1 In terms of parties to the agreement, it has been agreed that the only parties will be Horizon and IACC. In terms of third party payments, Horizon has restructured all payments to be paid to IACC, with some identified as needing to be paid onwards to a third party (where a deed of covenant must first be entered into between IACC and the third party).
- 2.2.2 As per Horizon's D5 responses, the WNMPOP structure has been removed from the agreement. A number of engagement groups remain: Welsh Language and Culture; WAMS Oversight Board; Jobs and Skills; Transport; Health and Wellbeing; and Emergency Services.
- 2.2.3 In terms of resourcing, Horizon is proposing a new article in the Order requiring Horizon (or any future undertaker) to satisfy the Secretary of State that it is an applicant of "sufficient standing", i.e. it has the resources necessary to implement the Project and is not subject to difficulties in sourcing and securing the necessary funding.

2.3 DCO and Unilateral Undertaking

- 2.3.1 Horizon considers that all matters within the s106 are likely to be resolved as between IACC and HNP. This view is shared with IACC.

- 2.3.2 However, in the event this is not possible, it is agreed that a suite of mirror provisions would be included in the DCO as a new schedule. To prepare for that possibility, work has started on this. Supporting that new DCO schedule would be a unilateral undertaking committing Horizon to make the financial contributions.

2.4 Location of secured commitments (DCO or s106 agreement)

- 2.4.1 The DCO requirements and control documents largely control what can be built and how it is built. Typically the s106 agreement contains the obligations which contain the significant financial payments for offsite or third party measures and the related package of controls and mitigations.
- 2.4.2 It is agreed that there are matters (such as but not limited to the Site Campus Occupancy targets) which could sit as a requirement but which are delivered through s.106 so that the package of mitigation can be read and understood as a whole.
- 2.4.3 Further, in respect of the Site Campus occupancy targets specifically, it is appropriate that these sit in the s106 agreement because non-compliance with the targets can trigger the release of contingency funds.
- 2.4.4 It is also submitted that the 'enforcement' regime under s.106 is more appropriate, in that non-compliance triggers mitigation actions rather than a criminal offence as it would under the DCO.

Table 2-1 1 March DCO S.106 Agreement Status Note

	Location	Issue	Applicant Position	IACC Position	WG Position
Front End					
1.	-	Inclusion of a clause requiring evidence of financial standing/restoration	An article containing a financial standing test will be included in the DCO to provide comfort that there is appropriate financing in place. No additional clause in s106 required	Agreed in principle	Agreed in principle
2.	cl. 7	Deed of covenant (DoC)	Horizon is comfortable with the form of the DoC proposed by IACC Further detailed drafting is under discussion on some parts of this clause including how to proceed if a third party will not sign a DoC	IACC has proposed a form of DoC to parties eligible to receive monies under the s106 Deed In addition NWP want a bespoke DoC which is not agreed as necessary by IACC Ongoing drafting on the clause itself	IACC and WG are in discussions to reach agreement. Outstanding issues: <ul style="list-style-type: none"> • enforceability by third parties; and • timing within which DoC is to be signed Ongoing drafting on the clause itself

	Location	Issue	Applicant Position	IACC Position	WG Position
Schedule 1 (Welsh language)					
3.	-	Quantum	A revised proposal has been put to IACC. Quantum of the package of Welsh language contributions is robust and appropriate.	Increased Welsh language contributions (in terms of annual contribution and funding for specific training programmes) sought An updated position on the revised offer is pending at this stage	Increased Welsh language contributions sought
Schedule 2 (Leisure Facilities)					
4.	-	Quantum	Quantum of the Leisure contributions is robust and appropriate and based on IACC requests from late 2018. Amends sought by IACC as to flexibility of the payment have been agreed	Increased Leisure contributions sought An updated position on the revised offer is pending at this stage	-
Schedule 3 (Tourism and Public Rights of Way)					
5.	Paras 2 and 4	Quantum of tourism contributions	A revised proposal has been put to IACC. Quantum of the package of Tourism contributions is robust and appropriate.	Increased Tourism contributions (in terms of annual contributions and funding for officers) sought An updated position on the revised offer is pending at this stage	Increased annual Tourism contributions have been sought however with the provision of the visitor centre and increased contributions agreement may be closer/

	Location	Issue	Applicant Position	IACC Position	WG Position
6.	Paras 8 and 11	Quantum of ProW/WCP contributions	A revised proposal has been put to IACC. Quantum of the package of PROW and WCP contributions is robust and appropriate.	Increased PROW and WCP contributions sought An updated position on the revised offer is pending at this stage	-
7.	Para 6	Obligations to deliver a Visitor Centre	The principle of delivery of a visitor centre has been agreed but there is ongoing discussion as to the specific obligations on this. In addition, agreement is pending on the payments to be made should opening of the Visitor Centre to be delayed or the Visitor Centre not provided by a certain date.	The principle of delivery of a visitor centre has been agreed but there is ongoing discussion as to the specific obligations on this. In addition, agreement is pending on the payments to be made should opening of the Visitor Centre to be delayed or the Visitor Centre not provided by a certain date.	The principle of delivery of a visitor centre has been agreed but there is ongoing discussion as to the specific obligations on this. In addition, agreement is pending on the payments to be made should opening of the Visitor Centre to be delayed or the Visitor Centre not provided by a certain date.
Schedule 4 (Jobs and Skills)					
8.	Para 2	Home based workers	It is appropriate to set targets for apprentices but not set levels Horizon has agreed that the JSIP can look at means to achieve the targets for apprentices but it is not possible to require a certain number.	Obligation to achieve set percentages sought An updated position as regards the revised HNP position on accepting	-

	Location	Issue	Applicant Position	IACC Position	WG Position
			Under both health and safety requirements and licencing restrictions, HNP must employ SQEPs and therefore to require a certain number of apprentices could affect the safety of the workforce and fail to comply with licensing obligations.	reference in JSIP is pending at this stage	
9.	Paras 2, and 7	Apprentices	<p>Horizon has agreed that the JSIP can look at means to achieve 85% HBW for the operational period but it is not possible nor fair to set targets for the same:</p> <ul style="list-style-type: none"> • As required by IACC and WG it has largely ceded control of financial decisions and training programmes to IACC and should not be penalised if those bodies fail to effectively utilise funds • Under its licencing, HNP must employ SQEPs; to require a set number of HBW could therefore simply prevent the power station from becoming operational 	<p>Obligations to achieve set percentages sought</p> <p>An updated position as regards the revised HNP position on accepting reference in JSIP is pending at this stage</p>	-
10.	Para 4.2	Quantum of Jobs and Skills	Quantum of the funding for Post-16 training to assist in achieving a	HNP position is agreed	A contribution of £21M is sought for post-16 training

	Location	Issue	Applicant Position	IACC Position	WG Position
		(Post-16) Contribution	KPI of 2000 HBW is robust and appropriate.		
11.	Para 11	Quantum of EDO Contribution	Funding of 2 EDOs for the construction period, with a developer liaison, is robust and appropriate. A revised offer for access given to the Service Level Contribution of increased funding on an annual basis if necessary	Increased funding for higher grade EDOs sought with funding to last 2 years into operation. An updated position on the revised offer is pending at this stage	-
Schedule 5 (Accommodation)					
12.	Para 7	Quantum of accommodation capacity enhancement contribution	Quantum of the funding for accommodation capacity enhancement is robust and appropriate	Quantum of the funding for accommodation capacity enhancement is agreed with HNP	A increased contribution is sought Gwynedd also takes this position
13.	Para 7, Annex 2	Bedspaces which can be delivered by capacity enhancement contribution	The principle of how the contribution can be used to deliver appropriate enhancement is agreed but the final indicative number of units which could be delivered is being discussed.	The principle of how the contribution can be used to deliver appropriate enhancement is agreed but the final indicative number of units which could be delivered is being discussed.	Confirmation of position pending

	Location	Issue	Applicant Position	IACC Position	WG Position
14.	Para 7	Allocation of capacity enhancement contribution	<p>Final allocations of the capacity enhancement contribution</p> <p>Currently this has been proposed at 95% (IACC), 4% (GC) and 1% (CCC), but with access to the contingency fund for GC and CCC</p> <p>There is ongoing discussions on this and there is a revised offer from IACC with a 90%/10% split</p>	<p>Final allocations of the capacity enhancement contribution proposed at 95% (IACC), 4% (GC) and 1% (CCC), but with access to the contingency fund for GC and CCC</p> <p>There is ongoing discussions on this and there is a revised offer from IACC with a 90%/10% split</p>	<p>Considers more funding should be directed to Gwynedd and Conwy</p> <p>Gwynedd also takes this position</p>
15.	Para 10.2	Inclusion of a cap on Non HBW in the community	<p>Horizon should be able to utilise bed spaces delivered by the capacity enhancement fund as well as existing head room in current supply. Safeguards are imposed by restrictions in clause 9 which trigger release of additional funds if set numbers of bedspaces in the PRS/Owner-Occupied sectors be exceeded</p>	<p>A cap preventing more than 3000 workers in the community sought</p>	<p>A cap preventing more than 3000 workers in the community sought</p>
16.	-	Phasing strategy	<p>The current proposals of early release of capacity funding combined with the delivery of tranches of the Site Campus are appropriate to meet the</p>	<p>Links with bed spaces to be provided and delivery of bed spaces via the site campus not agreed. The site campus phases</p>	<p>Links with bed spaces to be provided and delivery of bed spaces via the site campus not agreed. The site campus</p>

	Location	Issue	Applicant Position	IACC Position	WG Position
			accommodation demands of the workforce Horizon has agreed that there will be a revision to the Phasing Strategy to deliver the Site Campus in tranches of 1500, 1500 and 1000	should be released earlier. Updated position on revised release of phasing pending.	phases should be released earlier. Updated position on revised release of phasing pending.
Schedule 6 (Education)					
17.	Para 2	Quantum of education contribution	A revised proposal has been put to IACC. Quantum of the education contribution is robust and appropriate.	Increased education contribution sought An updated position on the revised offer is pending at this stage	- -
Schedule 7 (Transport)					
18.	Para 1	Quantum of transport officer contribution	Funding proposed for a transport is robust and appropriate. A revised offer for access given to the Service Level Contribution of increased funding on an annual basis if necessary	Funding for 2 officers sought. An updated position on the revised offer is pending at this stage	-
19.	Para 2	Expenditure of transport contribution	The transport contribution is agreed but the scope of what it should be spent on is under discussion	The transport contribution is agreed but what it should be spent on is under discussion	-

	Location	Issue	Applicant Position	IACC Position	WG Position
20.	Para 3	Road safety contribution	The road safety contribution is agreed but the scope of what it should be spent on is under discussion	The road safety contribution is agreed but what it should be spent on is under discussion	-
21.	Para 6	Road condition surveys	The principle of road condition surveys is agreed but the scope of this is under discussion	The principle of road condition surveys is agreed but the scope of this is under discussion	-
22.	-	Emerging resolution of WG transport matters	<p>Horizon considers agreement in principle has been reached to resolve issues as regards:</p> <ul style="list-style-type: none"> • Commitments to use park and share sites and providing information on those sites • Funding for traffic orders under the s106 • Monitoring and actions under the COCP <p>Wording is being developed for inclusion in the WN COCP and the s106 agreement</p>	-	WG will need to consider the wording proposed by Horizon,
23.		HGV movements over Britannia Bridge	There is no traffic impact evidence justifying a restriction on traffic movements eastbound over Britannia Bridge in the morning peak. However Horizon is prepared to commit to monitoring	-	WG seeks a restriction on east bound traffic in the morning peak across Britannia Bridge

	Location	Issue	Applicant Position	IACC Position	WG Position
			to reconsider this if monitoring shows a materially worse impact than modelled in the ES.		
24.		Shadow toll	It is not agreed that Horizon should bear the costs of the shadow toll and insufficient information has been provided to Horizon regarding justifying this.	-	WG has now received information from HNP and sent to Highways England to calculate costings relating to increased use. The basic position is HNP needs to indemnify WG under the section 106 for increased costs. Those costs are approx. £120,000 per construction year
Schedule 8 (Health)					
25.	Para 3, 4	Control over dentistry and pharmacy proposals	<p>Approval rights over dentistry and pharmacy proposals sit with BCUHB; there is no reason why WG would sign these off</p> <p>Further, there is no need for an indemnity to be give as regards pharmacy costs – the s106 obligations require this to be cost neutral</p>	-	<p>Approval rights sought over dentistry and pharmacy proposals.</p> <p>An indemnity over pharmacy costs sought</p>

	Location	Issue	Applicant Position	IACC Position	WG Position
26.	Para 8	Quantum of safeguarding contribution	<p>A revised proposal has been put to IACC.</p> <p>Quantum of the safeguarding contribution is robust and appropriate.</p> <p>Access is given to the health and education contingency funds to the extent safeguarding matters result in additional impacts on those areas.</p>	<p>Increased safeguarding contribution sought</p> <p>An updated position on the revised offer is pending at this stage</p>	-
Schedule 9 (Emergency services)					
27.	Para 1	Quantum of NWFRS contribution	<p>Quantum of the NWFRS contribution is robust and appropriate.</p> <p>It is noted that an increased contribution is sought by NWFRS</p>	No direct issues expressed.	-
28.	Para 2	Quantum of WAST contribution	Quantum of the WAST contribution is robust and appropriate. WAST agree with quantum provided Horizon commit that it will deal with any patient transfer from the main site / site campus.	No direct issues expressed.	-
29.	Para 3	Quantum of NWP contribution	Quantum of the revised NWP contribution is robust and appropriate.	No direct issues expressed.	-

	Location	Issue	Applicant Position	IACC Position	WG Position
			It is noted that an increased contribution is sought by NWP	IACC seeks to help facilitate agreement with NWP	
30.	-	Reassessment of Police Contribution	NWP want ability to reassess its required contribution. A reassessment is not required. The impacts for the police are linked to worker numbers (which is the determiner of traffic) and traffic movements. These are both the subject of many other controls and cannot be materially exceeded without a NMC or MC being sought.	-	-
31.	-	Funding for new police station	NWP want funding of £700,000 for a new police station. HNP has given a commitment to provision of operating space within the development alongside the site's security team.	-	-
32.	-	Contingency fund	NWP requires access to funding for intangible mitigation or unforeseen matters like protests or evacuation events (citing Hinkley).	-	-

	Location	Issue	Applicant Position	IACC Position	WG Position
			<p>The NWP funding is considered very robust and generous without a further contingency fund.</p> <p>It is noted that the HPC ExA report specifically stated that the applicant should not have to bear the costs of policing protests and demonstrations</p>		
33.		Role in approving various plans	<p>NWP wants approval rights over identified plans.</p> <p>Generally, In the D5 version of the DCO Horizon identified NWP as a consultee on a number of plans. However, even where NWP is not specifically identified, IACC has wide powers to consult with any party it considers appropriate in the discharge of the requirement.</p> <p>NWP has also been listed as a consultee where the WMS, CSMS, TIMP or AIL scheme is sought to be amended by Horizon through the tailpiece.</p>	-	-

	Location	Issue	Applicant Position	IACC Position	WG Position
			It is not agreed that approval rights are needed by NWP over and above this		
Schedule 10 (Construction Noise Mitigation)					
34.	-	-	No material outstanding issues	No material outstanding issues	-
Schedule 11 (Environment and Heritage)					
35.	Paras 1, 2 and 3	Quantum of heritage contributions	A revised offer for funding heritage matters has been proposed to avoid reliance on voluntary funds and provided committed AONB and other funding Funding proposed for heritage is robust and appropriate.	Increased heritage contribution sought An updated position on the revised offer is pending at this stage	-
36.		Cestyll garden management plan – Kitchen garden	A revised specification for the kitchen garden management plan has been proposed to cover: <ul style="list-style-type: none"> Limiting works on the site until main construction Demarcating the area of the kitchen garden and reinstating walls, subject to site safety and security considerations provide for public access 	Does not agree with CMP specification. An updated position on the revised offer is pending at this stage	Does not agree with CMP specification. An updated position on the revised offer is pending at this stage

	Location	Issue	Applicant Position	IACC Position	WG Position
			<ul style="list-style-type: none"> identify opportunities for landscaping and planting between the kitchen garden and the Valley Garden to reflect the connectivity of the former kitchen garden to valley garden provision of interpretation and information boards 		
37.		Felin Gafnan contribution	Pre- and post-construction surveys will be undertaken within funding of any repairs necessitated by undertaking of the development	A contribution to funding repairs to Felin Gafnan including installation of electricity, display lighting and repair of Mill machinery sought	-
38.		Recording of historic heritage	<p>Horizon is putting a proposal for reporting, analysis, publication, dissemination and archiving on archaeological finds together. AN updated position and reasons will be provided as soon as possible.</p> <p>However this will be managed outside of the s106 process; the obligations in the s106 will not be triggered until both the DCO is granted and works have Commenced</p>	IACC is seeking for Horizon to undertake reporting, analysis, publication, dissemination and archiving on archaeological finds. IACC has sought that this is committed to in the s106 agreement is a pre-commencement obligation	WG is seeking for Horizon to undertake reporting, analysis, publication, dissemination and archiving on archaeological finds. WG has sought that this is committed to in the s106 agreement s a pre-commencement obligation.

	Location	Issue	Applicant Position	IACC Position	WG Position
Schedule 12 (Community Fund)					
39.	-	-	No material outstanding issues	No material outstanding issues	-
Schedule 13 (Community Involvement Officers)					
40.	-	-	No material outstanding issues	No material outstanding issues	-
Schedule 14 (Site Preparation and Clearance)					
41.	-	Security for SPC works restoration	Subject to the overall article on security the position is likely to be that that either the financial standing test must be met or if work 12 commences before that then security would be provided until the financial security test is met. This would be dealt with in the DCO rather than the s106 agreement	Agreed in principle	Agreed in principle
Schedule 15 (Monitoring)					
42.	-	Quantum	Quantum of operational monitoring contribution is robust and appropriate. As revised proposal has been put to IACC for acceptance to increase monitoring for the first 10 years of Operation.	An increased contribution for monitoring during the operational period is sought. An updated position on the revised offer is pending at this stage	-

	Location	Issue	Applicant Position	IACC Position	WG Position
Schedule 16 (payments)					
43.	-	-	No material outstanding issues	No material outstanding issues	-